

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM, 2000 revision to January 1, 1992 program

I. INTRODUCTION

A. PURPOSE

The purpose of the Minority and Women-Owned Business Enterprise (MWBE) Program is to effectively communicate procurement and contracting opportunities through enhanced business relationships to end disparity and to increase the opportunities for minority and women-owned business enterprise participation in a competitive environment.

B. POLICY

Maricopa County will endeavor to ensure that minority and women-owned business enterprises have the opportunity to provide professional services, purchased goods, and contractual services to the County in a nondiscriminatory manner.

C. PROGRAM OBJECTIVES

1. To increase the opportunities for minority and women-owned business enterprise participation in procurement activities with Maricopa County.
2. To promote private sector utilization opportunities for minority and women-owned business enterprises to fulfill expected goals stated in County solicitations.
3. To assist in the development of entrepreneurial capabilities and skills of minority and women-owned business enterprises through educational programs.
4. To improve Maricopa County community awareness of the MWBE Program.

II. PROGRAM ADMINISTRATION

A. SCOPE

The Maricopa County MWBE Program will include, but is not limited to, all purchasing and contracting activities in the areas of architecture and engineering, construction, professional services, concessions, goods and equipment, and services conducted by all Maricopa County departments.

B. RESPONSIBILITY AND AUTHORITY

1. The Maricopa County Board of Supervisors (Board) is responsible for the development and the implementation of the MWBE Program. The Board ensures that the opportunity for MWBE participation is available in all Maricopa County contracting and procurement activities regardless of funding source or type of work.

These activities are ensured through:

- a. Adopting a policy statement in support of the Maricopa County MWBE Program.
 - b. Designating the Materials Management Department Director and the County Engineer the responsibility and authority to carry out the Board's policy statement.
2. The Materials Management Department Director is responsible for the achievement of the MWBE Program expected goals within Article 3 of the Procurement Code with the following exceptions: Departments operating under the Judicial Procurement Code - Presiding Judge; Maricopa Integrated Health Services - Chief Executive Officer of MIHS; Housing Department - Housing Department Director. Article 3 Procurement Code goals include, but are not limited to:
 - a. To the maximum extent feasible and consistent with the State of Arizona laws and the Maricopa County Procurement Code, procure materials, supplies, equipment, and Article 3 contractual services in a manner that will enhance opportunities for MWBE participation.
 - b. Ensure procurement officers analyze individual projects and procurements for potential MWBE participation and for the assignment of MWBE expected goals.
 - c. Collect MWBE contract and procurement information and provide regular reports to the MWBE Team.
 - d. Participate in workshops, seminars, and trade fairs with the MWBE Team.
 - e. Report progress of the program to the Board.
3. The County Engineer is responsible for the application of the requirements throughout the development and administration of Article 5 contract activities. Article 5 Procurement Code goals include, but are not limited to:
 - a. To the maximum extent feasible and consistent with the State of Arizona laws and the Maricopa County Procurement Code, procure professional and Article 5 contractual services in a manner and that will enhance opportunities for MWBE participation.
 - b. Ensure Article 5 procurement officers analyze individual projects and procurements for potential MWBE participation and assignment of MWBE expected goals.
 - c. Collect MWBE contract and procurement information and provide regular reports to the MWBE Team.
 - d. Participate in workshops, seminars, and trade fairs with the MWBE Team.

- e. Report progress of the MWBE Program to the Board.
4. The MWBE Team, jointly appointed by the Director of Materials Management and the County Engineer, has the overall responsibility for implementing Maricopa County's MWBE Program. This team:
- a. Approves the procedures and activities to implement the MWBE Program.
 - b. Recommends annual contract category MWBE expected goals to the procurement officers.
 - c. Disseminates information to departments about establishing individual project expected goals for MWBEs.
 - d. Coordinates the MWBE Program with departments and provides in-house orientation and direction.
 - e. Coordinates the outsourcing of the certification of firms for eligibility requirements necessary to participate as MWBEs.
 - f. Monitors the MWBE Program for achievement of expected goals and contract compliance.
 - g. Investigates MWBE Program challenges and complaints.
 - h. Conducts and/or coordinates outreach and promotes the MWBE Program to the Maricopa County community.
5. The Maricopa County Parity Partners advise the MWBE Team. They will:
- a. Assist the Team in developing and monitoring challenging, yet attainable, expected MWBE Program goals.
 - b. Advise the Team on how best to meet expected MWBE Program goals.
 - c. Develop and implement an educational program to assist MWBEs to participate in Maricopa County procurements and contracts.
 - d. Develop and implement an outreach program to inform MWBEs about opportunities for participation in the Maricopa County MWBE Program.
6. Procurement officers and project managers are responsible for implementing the MWBE Program at the working level and in accordance with procedures provided by the Materials Management Department Director and the County Engineer, respectively. A procurement officer and/or project manager shall evaluate each contract and/or purchase for potential MWBE participation. Based upon that evaluation, a MWBE goal shall be established, where justified, for each contract by the procurement officer. The procurement officers will forward quarterly participation reports to the MWBE Team.

C. REFERENCES

1. Maricopa County Procurement Code
2. Minority and Women-Owned Small Business Enterprise Program Procedures
3. Small Business Act, Sections 3 & 5 (Public Law 85-536 as amended)
4. Small Business Size Regulations, 13 CFR 121
5. City of Phoenix EOD, DBE Policy Plan
6. City of Phoenix Second Generation Disparity Study, April 1999
7. Maricopa County Minority and Women Owned Business Enterprise Program Study, 1991

D. PUBLIC DISCLOSURE

Public disclosure of files and records maintained by MWBE Team shall be handled pursuant to the Maricopa County Procurement Code, Article 1, and Arizona Revised Statutes.

E. SEVERABILITY

The provisions of the MWBE Program shall be effective in all cases unless otherwise provided for by County, State or Federal Law. The provisions of this program are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this program or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this program or the validity of their application to other persons or circumstances.

F. COORDINATION WITH OTHER LAWS OR REGULATIONS

On all contracts in which other governmental agency funding is used, the requirements of the Maricopa County Procurement Code and the MWBE Program shall apply in addition to those requirements imposed by other governmental agencies unless otherwise provided for by State or Federal law.

G. DEFINITIONS

Definitions of terms used in the description and achievement of the objectives of the Maricopa County MWBE Program are submitted in Appendix 1.

All words shall have their ordinary and usual meanings except those defined in Appendix 1 which shall have, in addition, the meaning set forth. In the event of conflict, the specific definition spelled out in Appendix 1 and any additional expansion of the definition contained elsewhere in this policy shall prevail.

H. SUNSET CLAUSE

The use of expected utilization goals would terminate at the end of Fiscal Year 2002, June 30, unless extended for additional years by the Board. The Board may terminate the use of expected utilization goals at such time when utilization equals availability. At least 45 days prior to sunset, termination, or extension of expected goals, Maricopa County will hold public hearings to gather input from the community.

In addition, statistical data demonstrating a disparity between utilization and availability of minority and women-owned business enterprises must be periodically updated and reviewed to support the need for expected utilization goals.

III. GOALS

The MWBE Program is designed to increase the opportunities for involvement of these groups in contracting and procurement activities with Maricopa County. The result of such a program will be the ultimate attainment and sustaining of a fair share of available contracting opportunities for MWBEs.

To ensure this attainment, the Board shall approve the use of contract category MWBE expected utilization goals. The MWBE Team will establish these expected goals and will annually review and revise such expected goals, if necessary. Procurement officers will establish expected goals on individual projects for all procurement and contracts where feasible.

A. ANNUAL UTILIZATION GOALS

The MWBE Team shall propose expected goals for each of the following contract categories: (1) architectural and engineering; (2) construction; (3) health and (4) purchasing and service (professional and general). These expected goals will be reviewed annually and revised, if necessary. To the extent that relevant information is available, the factors used in establishing or revising proposed expected utilization goals might include the following:

1. Total dollar amount of all contracts awarded during the past fiscal year. (Only contracts awarded to for-profit businesses will be counted.)
2. Total dollar amount of contracts or subcontracts awarded to MWBEs during the past fiscal year. (Only contract dollars awarded to for-profit businesses will be counted.)
3. Percentage of MWBE participation.
4. Dollar amount of anticipated procurements and contracts to be awarded for the next fiscal year.
5. Projection of the number and types of MWBEs available during the next fiscal year.
6. Statistical indicators, if any, showing the denial of equitable competitive opportunities to minority and women businesses.
7. The level of participation of minority and women-owned firms in past contracts awarded by the County.
8. Other information received from departments as required by this program, specifically to include the annual report, contract forecasts, and implementation

plans.

9. The level of participation of minority and women-owned firm contracts awarded in the Maricopa County geographical area, if available.
10. The level of participation recommended of minority and women-owned firms by other governmental agencies and by private agencies operating in Maricopa County, if available.
11. The number of minority and women-owned firms in Maricopa County, if available.
12. The number of minority and women-owned firms certified by Maricopa County and local governments, or other nationally recognized certification programs.
13. Any other factors deemed pertinent to the goal setting methodology by the MWBE Team in order to reasonably reflect the purpose of this program.

B. INDIVIDUAL CONTRACT EXPECTED GOALS

Individual contract and procurement expected goals would vary depending on the kind of work to be performed or purchases made and the known availability of certified MWBE firms in Maricopa County to provide such services.

C. TIMETABLES

MWBE annual expected goals will cover Maricopa County's fiscal year beginning July 1 and ending June 30.

D. MONITORING

The MWBE Team shall monitor the achievement of the overall annual and individual expected goals on a continuing basis. A review will be made on projected MWBE participation as compared to actual participation. Only those firms accepted by Maricopa County as certified minority or women-owned business enterprises shall be counted for the purpose of meeting expected goals.

E. GOOD FAITH EFFORTS

Bids or proposals that fail to meet MWBE minimum expected utilization goals might be considered non-responsive unless good faith efforts can be determined. A review process will be established to evaluate good faith efforts.

Reasonable "good faith" efforts expected could include, but are not limited to:

1. Written notification to MWBEs that participation in the contract is solicited.
2. Selection of portions of the proposed work that can be performed by MWBE firms with a provision providing that they are generally competitive.

The MWBE Team through this program will assist prime contractors/consultants in identifying possible qualified and interested MWBE subcontractors to meet designated MWBE expected goals. A MWBE directory will be made available, upon request, which contractors/ consultants may utilize in identifying MWBE firms. It will be the responsibility of the prime contractors/consultants to obtain the MWBE firms necessary to meet the MWBE expected goals.

Failure to contact the MWBE Team for assistance in complying with these expected goals may result in not having implemented "good faith" efforts. Contact may be in writing, by telephone, or in person. The name of the MWBE Team member spoken to should be obtained.

Failure to implement "good faith" efforts in accordance with MWBE Program to the satisfaction of Maricopa County may result in the rejection of the bid or proposal.

Appendix 1 Definitions

Cooperation The condition existing when a contractor has met and implemented the expectations of the Minority and Women-owned Business Enterprise Program.

Minority Business Enterprise (MBE) means a business concern which is independently owned and controlled by one or more persons who are citizens or lawful permanent residents of the United States, and who are members of one of the following groups:

- a. Black American includes persons having origins in any of the Black racial groups of Africa.
- b. Hispanic American includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or any Spanish culture or origin, regardless of race.
- c. Native American includes a person who is American Indian.
- d. Asian-Pacific American includes a person whose origin is from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the Northern Marianas, or the U. S. Trust Territories of the Pacific.
- e. Asian-Indian American includes a person whose origin is from India, Pakistan or Bangladesh.
- f. Members of groups or other individuals found to be economically and socially disadvantaged under Section 8(a) of the Small Business Act as amended (15 USC 637[a]). The individual's social disadvantage must have negatively affected his or her entry into, and/or advancement in, the business world. Their ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged. The closer the individual can link social disadvantage to impairment of business opportunities, the stronger the case.

For those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are part of the above-mentioned minority groups, a rebuttable presumption will be made that those individuals are socially and economically disadvantaged. It may also be determined on a case-by-case basis, that individuals who are not a member of one of these groups are socially and economically disadvantaged.

Women-owned Business Enterprise (WBE) means a business concern that is independently owned and controlled by one or more women.

Owned and controlled means a business

- a. Which is at least 51 percent owned and controlled by one or more minorities, women, or socially and economically disadvantaged individuals, in the case of a public-owned business, at least 51 percent of the stock of which is owned by one or more minorities, women, or socially and economically disadvantaged individuals, and

b. Whose management and daily business operations are controlled by one or more such individuals who have the authority to legally obligate and represent the business.

Small Business Enterprise means a small business concern defined as \$250 thousand net worth of the owner.

Expected Goals will vary depending on the kind of work to be performed or purchases made and the known availability of certified MWBE firms in Maricopa County to provide such services.

Disadvantaged Business Enterprise (DBE) means a statutory program to recipients of USDOT financial assistance intended to provide contracting opportunities for small business concerns (51% owned and controlled) of presumed socially and economically disadvantaged individuals. The owner(s) has a personal net worth of less than \$750,000.